

**DEPARTMENT OF TRANSPORTATION
PROJECTS - CATEGORICALLY EXCLUDED
ENVIRONMENTAL PROJECTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to implementing certain federal highway programs.

Highlighted Provisions:

This bill:

- ▶ authorizes the department to assume responsibility for:
 - determining whether state highway design or construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and
 - environmental review, consultation, or other actions required under federal law for categorically excluded projects;
- ▶ authorizes the waiver of the state's immunity under the 11th Amendment of the United States Constitution if:
 - the executive director executes a memorandum of understanding with the United States Department of Transportation accepting jurisdiction of the federal courts for certain responsibilities that the Department of Transportation has assumed;
 - the attorney general has issued an opinion letter finding that the memorandum of understanding is valid and binding on the state; and
 - the act or omission that is the subject of the lawsuit arises out of or relates to compliance, discharge, or enforcement of responsibilities assumed by the

Department of Transportation; and

▸ grants the Department of Transportation rulemaking authority to implement the program.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-1-207, as renumbered and amended by Chapter 270, Laws of Utah 1998

ENACTS:

72-6-120, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **72-1-207** is amended to read:

72-1-207. Department may sue and be sued -- Legal adviser of department -- Partial waiver of 11th Amendment immunity.

(1) The department may sue, and it may be sued only on written contracts made by it or under its authority.

(2) The department may sue in the name of the state.

(3) In all matters requiring legal advice in the performance of its duties and in the prosecution or defense of any action growing out of the performance of its duties, the attorney general is the legal adviser of the commission, and the department, and shall perform any and all legal services required by the commission and the department without other compensation than his salary.

(4) Upon request of the department, the attorney general shall aid in any investigation, hearing, or trial under the provisions of Chapter 9, Motor Carrier Safety Act, and institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and

statutes of this state or any rule or order of the department affecting motor carriers of persons and property.

(5) (a) The state waives its immunity under the 11th Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of the department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. Sec. 326.

(b) The waiver of immunity under this Subsection (5) is valid only if:

(i) the executive director or the executive director's designee executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. Sec. 326(c);

(ii) before execution of the memorandum of understanding under Subsection (5)(b)(i), the attorney general has issued an opinion letter to the executive director and the administrator of the Federal Highway Administration that the memorandum of understanding and the waiver of immunity are valid and binding upon the state;

(iii) the act or omission that is the subject of the lawsuit arises out of or relates to compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. Sec. 326; and

(iv) the memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

Section 2. Section **72-6-120** is enacted to read:

72-6-120. Department authorized to participate in federal program assuming responsibility for environmental review of categorically excluded projects -- Rulemaking authority.

(1) The department may:

(a) assume responsibilities under 23 U.S.C. Sec. 326 for:

(i) determining whether state highway design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and

86 (ii) environmental review, consultation, or other actions required under federal law for
87 categorically excluded projects;

88 (b) enter one or more memoranda of understanding with the United States Department
89 of Transportation related to federal highway programs as provided in 23 U.S.C. Sec. 326
90 subject to the requirements of Subsection 72-1-207(5);

91 (c) accept, receive, and administer grants, other money, or gifts from public and private
92 agencies, including the federal government, for the purpose of carrying out the programs
93 authorized under this section; and

94 (d) cooperate with the federal government in implementing this section and any
95 memorandum of understanding entered into under Subsection 72-1-207(5).

96 (2) Notwithstanding any other provision of law, in implementing a program under this
97 section that is approved by the United States Department of Transportation, the department is
98 authorized to:

99 (a) perform or conduct any of the activities described in a memorandum of
100 understanding entered into under Subsection 72-1-207(5);

101 (b) take actions necessary to implement the program; and

102 (c) adopt relevant federal environmental standards as the standards for this state for
103 categorically excluded projects.

104 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
105 department may make rules to implement the provisions of this section.